Supreme Court, U.S.
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(1)

88-312

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

BILLIE JAMES and PATRICIA VIRGINIA LEDBETTER
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent.

PETITION FOR WRIT OR CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS

FOR THE

FIFTH CIRCUIT

BILLIE JAMES and
PATRICIA VIRGINIA LEDBETTER
6147 CAREW
HOUSTON, TEXAS 77074
(713) 778-9612

52

QUESTIONS PRESENTED FOR REVIEW

1. Did Petitioners receive "DUE PROCESS" and/ or "PROCEDURAL DUE PROCESS" from the lower Administrative and Judical Courts.....
   A. by denying Petitioners "RIGHT TO CONFRONT ACCUSERS"?
   B. by denying Petitioners "RIGHT TO CROSS-EXAMINE"?
   C. by denying Petitioners "RIGHT TO SUBPOENA WITNESSES"?
   D. by denying Petitioners "RIGHT TO TRIAL BY JURY"?
   E. by denying Petitioners "RIGHT TO COUNSEL"?
2. Did Fifth Circuit render a decision in conflict with another federal court on the same matter?
3. Did Commissioner "WAIVE" the "Legal Right" to challenge Petitioners deductions, by ACTING upon TIMELY, ACCURATE and PROPER 1040s with "sufficient information to COMPUTE and assess liability" for years in question?
4. Can Taxpayers rely upon precedent case law

to file 1040 tax returns that will **trigger** the **"Statute of Limitations"**?

5. Can the I.R.S. with it's **audits** and **tax courts** operate under an **"EX POST FACTO"** system of disallowances and/or justice?

6. Did Petitioners, by supplying **"Sufficient information** upon which Commissioner could **COMPUTE** and **assess** a deficiency" file **proper** 1040 tax returns?

7. Can a Citizen be **forced** and/or **coerced** to **sign** a **document under "PENALITY** of **"PERJURY"**?

LISTS OF PARTIES

The undersigned certifies that the following list of persons have an interest in the outcome of this case, or have participated in the proceeding below. These representations are made in order that the Justices of this Honorable Court may evaluate disqualification or recusal.

1. Billie James & Patricia Virginia Ledbetter
   6147 Carew
   Houston, Texas 77074
   (713) 778-9612 or 772-8862
2. Commissioner of Internal Revenue, Respondent
3. Michael L. Paup, Attorney for Respondent
   Chief of Appellate Sec. of the Tax Division
   Department of Justice
   P.O. Box 502
   Washington D.C. 20044
4. Michael C. Durney, Acting Asst. Attorney General Tax Division
5. D. Irvin Couvillion, Special Trial Judge, U. S. Tax Court
6. Melanie Urban, Attorney for Commissioner at Tax Court
7. Any other Unknown Agents and/or representatives

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

BILLIE JAMES and PATRICIA VIRGINIA LEDBETTER
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Petitioners, Billie James and Patricia Virginia Ledbetter respectfully **PRAYS** that a **WRIT OF CERTIORARI** be granted to review the judgement of the United Stated Court of Appeals for the Fifth Circuit, decision entered on February 17th, 1988.

OPINION BELOW

The Court of Appeals entered it's decision affirming the Tax Court's decision on February 17th, 1988. A **PETITION FOR REHEARING** was timely filed by Petitioners and denied by **REAVLEY, KING, and JOLLY, Circuit Judges** on March 29th, 1988. Copies on the Fifth Circuit's decision and on PETITION FOR REHEARING denial are respectfully attached as **Appendix A** and **B.**

JURISDICTION

On February 17th, 1988, the Fifth Circuit Court of Appeals entered judgement affirming Tax Court's decision. (App. A). On March 29th 1988 the Fifth Circuit Court of Appeals denied them on PETITION FOR REHEARING. (App. B). The Jurisdiction of the Supreme Court is invoked under Title 28, United States Code, Section 1254.

CONSTITUTIONAL PROVISION INVOLVED

CONSTITUTION of the UNITED STATES..... **Amendment V**....."nor be **deprived** of life, liberty, or **property, without due process** of law;"

Amendment VI....."to be **CONFRONTED** with the **witnessess** against him; to have **COMPULSORY PROCESS**

for **obtaining witnesses** in his favor, and to have the **Assistance** of **Counsel** for his defense."

Amendment VII....."in suits at common law, where the value in controversy shall exceed twenty dollars, the **right** of **trial** by **jury shall be preserved**....."

Amendment XIV....."nor shall any state deprive any person of **life, liberty**, or **property; without due process of law; nor deny** to any person within it's jurisdictien the **equal protection** of the **laws**."

STATEMENT OF THE CASE

On February 17th, 1988, a panel of the Fifth Circuit Court of Appeals affirmed the decision of the U.S. Tax Court. Billie James and Patricia Virginia Ledbetter were alleged and/or convicted to have violated IR Code Section 6065 **failing** to **verify** 1979 & 1980, 1040 tax returns **under penality of perjury.** Failing to compute depreciation under IR Code Section 167 correctly. Charitable contributions that were correctly deducted by Petitioners under IR Code Section 170(a), to a 501(c)(3) charitable org-

anization, were disallowed by Commissioner using **EX POST FACTO** methods. Commissioner further alleged a gain from the sale of a 1978 Ford F-700 dumptruck. Last, whether Petitioners are liable for the additions to tax under IR Code sections 6651(a)(1), 6653(a) and 6654.

The Fifth Circuit Court of Appeals affirmed the lower court's decision on **MOTION FOR APPEAL** by Petitioners of February 17th, 1988, and on March 29th, 1988, **MOTION FOR REHEARING** was denied.

Petitioners filed a **"MOTION TO DISMISS"** under IR Code sections 6501(a) and 7459(e). This motion was denied by Special Trial Judge Couvillion on August 25th, 1985.(U.S. Tax Court transcript, page 113, lines 2-10, 20-25; page 114, lines 1-6).

Billie James and Patricia Virginia Ledbetter have climbed the legal ladder, we are now **COMPELLED** to seek a **WRIT OF CERTIORARI** from the **Supreme Court** in the name of **justice**.

REASON FOR GRANTING THE WRIT

Where Petitioners were **totally denied** the fundamental elements of **"DUE PROCESS OF LAW"**...

1. The **"RIGHT NOT TO BE A WITNESS AGAINST HIMSELF"**.....
2. **"TO BE CONFRONTED WITH THE WITNESSESS AGAINST HIM"**.....
3. **"TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSESS"**.....
4. **"TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE."**.....
5. **"THE RIGHT OF TRIAL BY JURY,"**.....

There can be **no fair** and **impartial tribunal**, as the **Constitutional** provision of **"DUE PROCESS OF LAW"** demands, without these elements.

In **Jack R. Goldberg v. John Kelly**, 90 S.Ct. 1011, 1021 (1970), **quoting** what is particularly pertinent here:

> "Certain principles have remained relatively immutable in our jurisprudence. One of these is that where **governmental action** seriously **injures** an individual, and the reasonableness of the action **depends** on **fact findings**, the evidence used to prove the Government's case **must** be disclosed to the individual so that he has an **opportunity** to **show** that it is **untrue**. While this is **important** in the case of **documentary** evidence, it is even

more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment * * *. This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, * * * but also in all types of cases where administrative * * * actions were under scrutiny."

Further....."In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. ICC v. Louisville & N.R. Co. 227 U.S. 88, 93-94, 33 S.Ct. 185, 187-188, 57 L.Ed. 431 (1913); Willner v. Committee on Charter & Fitness, 373 U.S. 96, 103-104, 83 S.Ct. 1175, 1180-1181, 10 L.Ed. 2d 224 (1963)." Board of Regents of State Colleges et al. v. Roth 408 U.S. 564, 573, 584 (1971); Slochower v. Board of Education 350 U.S. 551, 559; Speiser v. Randall 357 U.S. 513. I cannot list all the case law on "due process" and the "RIGHT TO CONFRONT AND CROSS-EXAMINE", nor do I believe this

Honorable Court wants me to.

Petitioners wish to state at their trial in Tax Court, Commissioner's attorney **introduced** the **evidence** via her **testimony** and **documents** she **produced**. **Miranda v. Arizona**, 384 U.S. 436 (1965); **Mathis v. United States**, 391 U.S. 1 (1968). Petitioners **objected** to this from the beginning as **HEARSAY** and **denying** us the **"RIGHT TO CROSS-EXAMINATION"** and **"CONFRONTATION."** Note: This Supreme Court ruled only a few weeks ago about the **"RIGHT TO CONFRONTATION"** **D. Coy v. Iowa** 86-6757 (1988); **Supreme Court Bulletin; Modern Constitutional Law; Constitution of the United States. Title** 42, § 1983.

Petitioners **objected** to the **Tax Court's lack of PROCEDUAL DUE PROCESS**, but we were tried **over** and **above** our objections. (U.S.Tax Court transcript, page 81, line 25; page 82, lines 1-8, and 21-25; page 83, lines 1-3; page 84, lines 16, 20; page 85, lines 7-10 and 15-16; page 96, lines 12-15; page 102, lines 10-16, lines 23-25; page 103, lines 1-2; page 117, lines 23-25. This **lack** of **"due process"** is evident from **beginning** to the **end** of our trial.

As for Petitioners **Timely**, and **Proper** 1040 **tax returns**, "Every return **MUST show facts upon which an assessment for the taxable period can be made.....Where such information is given the Statute begins to run."** **Willingham Loan and Trust Co. v. Commissioner** 36 F.2d. 49; **Cem Securities Corp. v. Commissioner of Internal Revenue**, 28 U. S. B.T.A. 102, 106 (1933); **U.S. v. National Tank & Export Co.**, 45 F. (2d) 1005 (1930).

Even the Commissioner's cases states the same thing.....quote.....

"However, **it is equally clear that in order for a document to contitute a tax return of a Taxpayer, it MUST contain sufficient data from which Respondent can compute and assess his liability with respect to a particular tax."** **Edward A. Cupp v. Commissioner**, 65 T.C. 68, 79 (1975); and **Silkman v. Commissioner**, 84-2 USTC. **Lucas v. Pilliod Lumber Co.**, 281 U.S. 245(1930).

Petitioners **did in fact supply sufficient data on their** 1040 **tax returns**, which Commissioner **acted upon by sending** Petitioners **refund checks** for the years in question.

The charitable organization to which our

donations were made were verified with the I.R. S.' own publication for the years in question. (Cumulative List of Organizations for 1979, 80, and 81). Also case law was used for authentication for receipts. An act legal when performed CANNOT become illegal after the act is done. U.S. Constitution forbids "EX POST FACTO" rulings. Cummings v. the State of Missouri [Sup. Ct. Dec. 1866] 277, 286; Wilensky v. Fields, Fla., 267 So. 2d 1, 5.

Petitioners were DISCREDITED by the U.S. Tax Court's irresponsible act of stating our 1978 Ford F-700 dump truck was REPOSSESSED. We object to this action in the HIGHEST POSSIBLE WAY. We have NEVER had anything REPOSSESSED, nor did we return the dump truck. It was sold, documents were introduced to Tax Court, and the Fifth Circuit to substantiate this fact.

We believe in FAIR-PLAY and JUSTICE, (Board of Regents of State Colleges et al. v. Roth, 408 U.S. 564, 573, 585, 591 (1971)) and DO NOT in any way support this derogatory type and style of deformation of ones character by ANY government agency, but surely do not expect

this of the Courts of this nation, where HONOR and ETHICS should PREVAIL. Goldberg v. Kelly, 90 S.Ct. 1011, 1020 (1970).

Petitioners used IR Code, section 167 to compute method of depreciation. There is nothing in section 167 that will support Commissioner's claim in any manner.

CONCLUSION

For the forgoing stated reasons, Billie James and Patricia Virginia Ledbetter PRAYS and respectively request a WRIT OF CERTIORARI be granted for review of the judgement of the United States Court of Appeals for the Fifth Circuit, in the name of "justice" and "DUE PROCESS OF LAW".

Dated this 15th of August, 1988.

Respectfully submitted,

Billie James Ledbetter

Patricia Virginia Ledbetter
6147 Carew
Houston, Texas 77074
(713) 778-9612 or 772-8862
Petitioners

CERTIFICATE OF SERVICE

This is to certify three true and correct copies of the forgoing WRIT OF CERTIORARI for Billie James and Patricia Virginia Ledbetter, Petitioners, were mailed CERTIFIED Mail, RETURN RECEIPT REQUESTED, to the following interested party and/or parties, on this the 25th, day of July 1988.

Solicitor General
Department of Justice, Room 5614
Washington, D.C. 20530

Subscribed and Sworn to before me on this day, _____ did serve on concerned parties, three true and correct copies of WRIT OF CERTIORARI by CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

Signed this_____, day of_____1988.

_____

_____

NOTARY PUBLIC, the State of Texas

_____

Commission Expires:_____

A P P E N D I X

for

WRIT OF CERTIORARI

* * * * * * *

BILLIE JAMES and

PATRICIA VIRGINIA LEDBETTER
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent.

(App. A)

Billie James and

Patricia Virginia LEDBETTER,
Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

No. 87-4454

Summary Calendar.

United States Court of Appeals,

Fifth Circuit.

Feb. 17, 1988.

Taxpayers challenged income tax deficiencies assessed against them for three years which were affirmed by the United States Tax Court. The Court of Appeals, E. Grady Jolly, Circuit Judge, held that: (1) forms on which statement "under penalty of perjury" was obliterated did not constitute valid returns for purposes of statute of limitations; (2) taxpayers failed to show valid deductible charitable contributions were made by them to church organization; (3) recognition of gain on sale of truck depreciated as business expense, to extent purchaser assumed debt, was proper; and (4) double-declining-balance method could not be used to de-

preciate used van and motorcycle not originally purchased for taxpayer's business.

Affirmed.

1. **Internal Revenue** 4477, 4478, 4572

Federal income tax forms in which the language "under penalty of perjury" had been obliterated did not constitute valid returns, for limitations purposes, and thus notices for deficiency filed more than three years after unverified forms were submitted were timely. 26 U.S.C.A. §§6651(a)(1), 6653(a), 6654(a).

2. **Evidence** 355(1)

Receipts regarding taxpayers' purported cash contributions to local chapter of California-based church were properly excluded on grounds that personnel who prepared them were not called to testify and documents did not fall within business records exception to hearsay rule, where proffered receipt did not explicitly state in what form contribution was made and amount of contribution was clearly typed into a blank space, possibly allowing unauthorized use or alteration of the form receipt. Fed.Rules Evid.

Rules 802-804, 28 U.S.C.A.;26 U.S.C.A.§ 1 et seq.

3. Internal Revenue 3179

The recognition of a gain does not depend upon whether the sale of property which was depreciated as a business expense was repossessed or sold.

4. Internal Revenue 3199

Gain was properly recognized on taxpayer's sale of truck which had been depreciated as a business expense in the amount of debt assumed by purchases on the truck.

5. Internal Revenue 3217

Taxpayers failed to meet burden of proving amount allegedly paid in order to clear title of truck which they sold and thus failed to show that that amount should be added to their adjusted basis in truck which had been depreciated as a business expense.

6. Internal Revenue 3476

Under internal revenue regulations, taxpayer's van could not be depreciated under double-declining-balance method because it was used be-

cause it was used vehicle when acquired. 26 U. S.C.A. § 167(b)(2).

7. Internal Revenue 3476

Double-declining-balabce method could not be used to depreciate motorcycle which, although purchased new, was not used in taxpayer's business until taxpayer later began his automobile repair business. 26 U.S.C.A. § 167(b)(2).

8. Internal Revenue 5235

Taxpayers challenging additions to their tax liabilities who produced no evidence to support their contentions failed to carry burden of showing additions were invalid. 26 U.S.C.A. §§ 6651 (a)(1), 6653(a), 6654(a).

Appeal from the Decision of the United States Tax Court.

Before REAVLEY, KING AND JOLLY Circuit Judges.

E. GRADY JOLLY, Circuit Judge:

Petitioners Billie James Ledbetter and Patricia Virginia Ledbetter challenge the income tax deficiencies assessed against them for the years 1979, 1980, and 1981, which were affirmed by the

United States Tax Court in **LEDBETTER v. COMMISSIONER, T.C.M.** 575 (1986). We affirm the Tax Court's decision.

I

The Petitioners, whose legal residence is in Houston, Texas, filed Joint 1040 forms for the years 1979, 1980, and 1981. **All returns were complete on their face** except that, on the forms for 1979 and 1980, the words "under penalties of perjury" were crossed out. The returns filed by the Petitioners for 1981 was not so altered.

On December 14, 1984, the Commissioner issued the Taxpayers separate statutory notices of deficiency for each year, alleging several deficiencies in the returns. First, the Commissioner determined that the returns for 1979 and 1980 were invalid because they had not been signed under penalties of perjury. Accordingly, the Commissioner divided all incoming deductions equally between the Taxpayers (pursuant to the community property laws of Texas) and redetermined their tax liabilities separately for those two years. In reassessing the tax liability, the

I.R.S. disallowed deductions for charitable contributions allegedly made to the Universal Life Church for the years 1979, 1980 and 1981, and included a $9,000 gain on the sale of a truck. The IRS also disallowed depreciation, taken under the double-declining-balance method, for a truck and motorcycle owned by the Petitioners, and reassessed the deduction under the straight-line method. Finally, the Commissioner assessed a five percent addition to tax for negligence or intentional disregard of the tax law pursuant to Code sections 6651(a)(1), 6653(a), 6654(a).

The IRS assessments were all upheld by the Tax Court. On appeal, the Ledbetters reassert their challenges to these assessments. We affirm the Tax Court's decision. The Commissioner's determination of a tax deficiency bears the presumption of correctness, and the burden of disproving the deficiency rests with the Taxpayer. **POTITO v. CIR**, 534 F.2d 49 (5th Cir.1976)(citing **WELCH v. HELVERING**, 290 U.S. 111, 115, 54 S.Ct. 8, 9, 78 L.Ed. 212 (1933)). The Petitioners here have failed to meet that burden.

II

A.

As an initial matter, the Taxpayers argue that the 1040 forms filed for 1979 and 1980 were legally valid, having been signed, and that by deleting the statement "under penalty of perjury," he was merely exercising some unspecified constitutional right. This issue becomes crucial because I.R.C. § 6501 requires the IRS to assess tax tithin three years after filing of a return. No statute of limitations exists in the case of failure to file a return, however.

[1] The significance of the failure to verity a return is unmistakably clear. IRC § 6065 specifically requires that a return "shall contain or be verified by a written declaration that it is made under the penalties of perjury." See also 26 C.F.R. § 1.6065-1a. Forms submitted to the IRS in which the verification language has been obliterated do not constitute valid returns. **UNITED STATES v. MOORE**, 627 F.2d 830 (7th Cir.1980); **CUPP v. COMMISSIONER**, 65 T.C. 68, 78-79 (1975), Aff'd in an unpublished opinion 559 F.2d 1207 (3d Cir.1977). The Ledbetters do not

dispute the fact that they failed to sign the documents under penalty of perjury. As the district court correctly held, the effect of this failure is undeniable. Therefore, the notices of deficiency for the Petitioners' 1979 and 1980 tax returns were timely.

B.

[2] The Ledbetters also claim that the Tax Court erred when it held that they had failed to prove that valid, deductible, charitable contributions were made by them to the Universal Life Church of Modesto, California. The Universal Life Church is an organization that was listed as a valid charity for purposes of tax deductions in the years 1979, 1980 and 1981. The Petitioners claim that they made cash contributions to this organization in the amounts of $9,240, $1,647, and $1,845 for those years respectively. Billie James Ledbetter testified that these contributions were given in cash to a local chapter of the church which remitted the amounts to the church in Modesto. The IRS disallowed these contributions because, they contend, there is not sufficient evidence to in-

dicate that they were actually made. At trial, the Ledbetters' only evidence that supported their testimony concerning the deductions to the church were three receipts purportedly prepared by personnel of the Universal Life Church of Modesto. Upon the IRS's objection, however, the court excluded these documents as inadmissible hearsay because the personnel who prepared them were not called to testify, and the documents did not fall within the business-records exception to the hearsay rule, Federal Rules of Evidence, Rules 802, 803 and 804. We find no error in the Tax Court's decision to exclude these receipts as unreliable evidence that the claimed cash contribution was in fact made. Indeed, the proffered receipt does not explicitly state in what form the contribution was made and the amount of the contribution was clearly typed into a blank space, possibly allowing unauthorized use or alteration of the form receipt. Consequently we find no error in its decision that the Petitioners failed to meet their burden of proving that the cash contributions were ever made, or if made were used for religious or

charitable purposes and not for personal benefit. See **HALL v. COMMISSIONER**, 729 F.2d 632 (9th Cir.1984).

C.

[3-5] The Ledbetters next contend that the Tax Court erred when it affirmed the Commissioner's decision that they had recognized a $9,000 gain on the 1979 sale of their Ford F-700 truck that had been depreciated as a business expense. The Petitioners mistakenly argue that because the truck was sold, rather than repossessed, the district court erred in forcing them to recognize a gain. The recognition of gain does not depend, however, upon whether the truck was repossessed or sold; regardless of how it occurred, the Internal Revenue Code requires that the amount realized from the disposition of property be recognized as a gain to the extent that the income from the sale exceeds the depreciated basis. This includes any liability dis charged as result of the disposition. When the purchases assumed the $9,000 debt on the truck, that amount had to be imputed as income to the Taxpayer-sellers. The Ledbetters argue in the

alternative that they paid $1,800 in order to clear the truck's title and that this $1,800 should be added to their adjusted basis in the truck. They produce no evidence, other than Mr. Ledbetter's own testimony, to establish that payment. The weight of such testimony is to be determined by the Tax Court. **POTITO**, 534 F.2d at 51 (citing **Stein v. Commissioner of Internal Revenue**. 322 F.2d 78 (5th Cir.1963)). Again, the Ledbetters failed to meet their burden, and we find no error in the district court's decision.

D.

[6,7] Next the Taxpayers challenge the IRS's evaluation of their depreciation deductions in 1980 and 1981 for a 1975 Dodge Custom van and a 1978 Honda 750 motorcycle. The Taxpayers used a double-declining-balance method, authorized by section 167(b)(2) only if the original use of the property is in the trade or business of the Taxpayer. The district court held that the Dodge Custom van could not be depreciated under an accelerated method because it was a used vehicle when acquired by the Ledbetters, and that the 1978 motorcycle, although purchased new in March

1978, was not used in business until 1979 or early 1980 when Mr. Ledbetter began his automobile repair business. The acquisition date of the motorcycle and the date of the start of business were both taken from Mr. Ledbetter's own tax returns, and the Petitioners acknowledged at trial that the van had been acquired as a used vehicle. The district court merely applied Tax Regulation 1.167(c)-1(a)(6) to the facts admitted by the Petitioners. Clearly, there was no error in this decision.

E.

[8] Finally, the Petitioners challenge the additions to tax made by the Commissioner under sections 6651(a)(1) (for failure to file), 6653(a) (for underpayment of tax resulting from negligent of intentional disregard of rules and regulations), and 6654(a) (for underpayment of estimated tax). Again, the Petitioners bore the burden of showing that these additions to tax were invalid, and again they failed. See **United States v. Janis**, 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976); **Bixby v. Commissioner**, 58 T.C. 757,791 (1972), and **Grosshandler v. Commis-**

sioner, 75T.C. 1, 2021 (1980). Again, the Petitioners adduced no evidence to support their contentions and there was no error in the district court's decision.

For the reasons given above, the judgment of the district court is

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 87-4454

BILLIE JAMES and
PATRICIA VIRGINIA LEDBETTER,

Petitioners-Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Appeal from the Decision of the
United States Tax Court

ON PETITION FOR REHEARING

(March 29, 1988)

Before REAVLEY, KING and JOLLY, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby

DENIED

ENTERED FOR THE COURT:

United States Circuit Judge

SUPREME COURT OF THE UNITED STATES

No. A-971

BILLIE JAMES AND
PATRICIA VIRGINIA LEDBETTER,
Applicants,

v.

COMMISSIONER OF INTERNAL REVENUE

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of the Applicants,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same if herebe, extended to and including July 26, 1988.

s/ Byron R. White
Associate Justice of the Supreme
Court of the United States

Dated this 21st
day of June, 1988.

(App. D)

UNITED STATES SUPREME COURT

BILLIE JAMES and **PATRICIA VIRGINIA LEDBETTER,** Appellants, Petitioners, v. **COMMISSIONER OF INTERNAL REV.** Appellee, Respondent.	)	No. 87-4454

MOTION FOR AN EXTENSION OF TIME

I

BILLIE JAMES and **PATRICIA VIRGINIA LEDBETTER** request a sixty (60) day extension of time for the filing of their **CERTIORARI**. The 5th Circuit's decision was March 29th, 1988, making our **CERTIORARI** due June 27th, 1988. A sixty (60) day extension will make our **CERTIORARI** due August 26th, 1988.

II

Due to my (Billie's) college commitment and graduation, (study for final exams etc.) and preparing and taking the **LSAT**, time has been very compact, leaving no extra time for anything. I enrolled and completed college in only two (2) years and eight (8) months. I also

operate my own Auto Repair Business with no help.

III

By representing ourselves, we are in **NO-WAY** implying we do not need legal assistance, **WE DO VERY MUCH.** We have called and/or talked in person to about twenty-five (25) attorneys, all wanted a minimum fee of $200.00 per hour. Since I (Billie) had to handle this case I have invested over **THIRTEEN-HUNDRED** (1300) hours in it's **preparation** (legal research) and **presentation** (correspondence, audit and court trial time). This amount of time put legal assistance out of our financial reach, **even though legal help was needed in every step of the way.** Never the less we have tried to present our case in **GOODFAITH, based** in the IRC., **laws** and **case law.**

IV

Billie James and Patricia Virginia Ledbetter **PRAYS** this Honorable Court will grant this sixty (60) day extension of time, that is truly needed and will be greatly appreciated. This **matter is VERY IMPORTANT to us,** and we wish only to have enough time to do a good

job. Thank you very much for your consideration in this matter.

Dated this 17th day of June 1988.

Billie James Ledbetter

Patricia Virginia Ledbetter

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T. C. Memo. 1986-575

UNITED STATES TAX COURT

BILLIE JAMES and PATRICIA VIRGINIA LEDBETTER,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 6263-85 Filed December 3, 1986.

Billie James Ledbetter, pro se.

Melanie R. Urban, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

COUVILLION, Special Trial Judge: This case was assigned pursuant to the provisions of section 7456(d) (redesignated as section 7443A by the Tax Reform Act of 1986, Pub.L. 99-514, section 1556, 100 Stat.____) of the Code[1] and Rules 180, 181, and 182.

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[1] All section references are to the Internal Revenue Code of 1954, as amended, unless otherwise indicated; and all Rule references are to the Tax Court Rules of Practice and Procedure.

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Petitioners are husband and wife. On December 14, 1984, respondent issued three notices of deficiency, one to each Petitioner, for 1979 and 1980, and a joint notice for 1981. The determined deficiencies in Federal income tax and additions to tax are as follows:[2]

		Additions to Tax		
Year	Deficiency	Section 6651(a)(1)	Section 6652(a)	Section 6654
1979	$1,499.00	$170.59	$74.95	$20.05
1980	$ 130.00	--	$ 6.50	--
1981	$1,124.00	--	$56.20	--

The validity of the notices of deficiency as to 1979 and 1980 depends upon whether Petitioners filed valid returns for these years. If valid returns were filed, the notices of deficiency for 1979 and 1980 were not timely, since the notices were issued well after the three-year statute of limitations provided by section 6501 as to each of said years. Other issues are: (1) Whether Petitioners were entitled to charitable deductions for 1979, 1980, and 1981; (2) whether Petitioners realized gain in 1979

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[2] The deficiencies in Federal income tax and additions to tax for 1979 and 1980 as to each Petitioner are identical.

upon the **repossession** of a truck used in their or business; (3) whether Petitioners were entitled in 1980 and 1981 to accelerated depreciation of certain assets used in their trade or business; (4) whether Petitioners realized additional gross income from their trade or business in 1981; and (5) whether Petitioners are liable for the additions to tax.[3]

Respondent moved for damages under section 6673. This motion was **denied** at trial.

FINDINGS OF FACT

Petitioners' legal residence was Houston, Texas, at the time their petition was filed. For 1979 and 1980, on or before the dates due for filing of returns for said years, **Petitioners filed joint Forms** 1040, U.S. Individual Income Tax Return, **which were complete on face,**

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[3] For 1980, Petitioners have not challenged two adjustments, an increase in travel supplies expenses from $7,500 to $9,569.65, and an increase in travel and entertainment expenses from $626 to $954.15. For 1981, Petitioners conceded during trial adjustments disallowing depreciation of $1,505 and an investment tax credit of $225 relating to an asset referred to as a "Hunter Brake Drum Shop." Petitioners agreed this asset was acquired in 1982 and could not be considered on their 1981 return.

except that the jurat on each return "Under penalties of perjury" was crossed out. Respondent took the position taht no returns were filed for these years and, accordingly, redetermined Petitioners' tax liabilities. For 1981, the return filed be Petitioners was not so altered.

Respondent disallowed charitable contributions to the Universal Life Church claimed by Petitioners in the amounts of $9,240, $1,647, and $1,845, for 1979, 1980, and 1981.

During 1979, Petitioners owned a truck in a hauling business they conducted. In the latter part of 1979, Petitioners' truck, a 1978 Ford F700, was **repossessed.** They then abandoned their hauling business. In the transaction in which their truck was **repossessed**, the **repossessing** creditor assumed or paid a $9,000 indebtedness on the truck. Petitioners contend the indebtedness on the truck was $10,800 and paid $1,800 of their own money to clear the title. The transaction was not reported by Petitioners on their 1979 return. Respondent determined the **repossession** was a taxable event and that Petitioners realized a gain of $5,461.37.

In 1980 and 1981, Petitioners operated an auto repair shop and claimed depreciation of a 1975 Dodge Custom Van and a 1978 Honda 750 Motorcycle under the double-declining balance method authorized by section 167(b)(2). Respondent disallowed this method for the reason that the two assets were not acquired new and were initially acquired for personal use before being placed in service in Petitioners' trade or business.

On their 1981 return, Petitioners reported gross receipts from their auto repair business of $20,384. Respondent determined this amount to be $21,042.89 and, accordingly, increased their gross receipts by $658.89.

OPINION

With respect to the validity of the purported returns filed by Petitioners for 1979 and 1980, section 6501(a) requires respondent to assess tax within three years after the filing of a return. However, in the case of failure to file a return, no statute of limitations exists and respondent may assess tax at any time. Section 6501(c)(3). Section 6061

states that:

> any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.

More importantly, section 6065 provides that:

> Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury. [Emphasis supplied.]

See also section 1.6065-1(a), Income Tax Regs.

The failure to sign forms in accordance with section 6065 is the equivalent of the failure to file returns required by other sections of the Internal Revenue Code.[4] United States v. Moore, 627 F.2d 830, 834 (7th Cir. 1980); Beard v. Commissioner, 82 T.C. 766, 777 (1984), affd. 793 F.2d 139 (6th Cir. 1986); Cupp v. Commissioner, 65 T.C. 68, 78-79 (1975), affd. in an unpublished opinion 559 F.2d 1207 (3d Cir. 1977). Under section 6065, Petitioners

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[4] See also Schroeder v. Commissioner, T.C. Memo. 1986-467; Schroeder v. Commissioner, T.C. Memo. 1986-337.

failed to file returns for 1979 and 1980. Modification of printed forms, especially striking out the statement that the form was signed under penalty of perjury, invalidates an otherwise valid return and results in a failure to file. Under section 6501(c)(3), therefore, respondent's notices of deficiency were timely as to Petitioners' 1979 and 1980 tax years.

Petitioners contend that refunds were paid based on the returns they filed for 1979 and 1980 and argue that respondent obviously treated the documents as valid returns. Therefore, they contend the statute of limitations commenced running when their purported returns were filed.

Respondent's action in refunding taxes on invalid returns did not render the documents valid returns. While respondent's action in making the refunds was inconsistent with the positions by respondent do not preclude respondent from **changing his position.** In Coors v. Commissioner, 60 T.C. 368, 406 (1973), affd. 519 F. 2d 1280 (10th Cir. 1975), this Court held that prior administrative determinations by respondent as to the same taxpayer did not preclude

respondent from making a contrary determination for a different year. Similarly, respondent is not estopped from asserting a position, even though respondent failed to object to similar circumstances in prior years. Easter v. Commissioner, 338 F.2d 968 (4th Cir. 1964),affd. per curiam a Memorandum Opinion of this Court; Caldwell v. Commissioner, 202 F.2d 112 (2d Cir. 1953), affg. a Memorandum Opinion of this Court; Rose v. Commissioner, 55 T.C. 28, 32 (1970). Also, **respondent is not bound by erroneous application of the law by agents of the Internal Revenue Service**. Estate of Emerson v. Commissioner, 67 T.C. 612, 617-618 (1977). We, therefore, dismiss Petitioners1 contention that the refunds of taxes validated the documents filed by them as returns. The notices of deficiency, therefore, were timely and not barred by the statute of limitations.

The determinations by respondent in a notice of deficiency are presumed correct, and the burden of proof to show that the determinations are wrong is on Petitioners. Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a).

With respect to Petitioners' claimed charitable contributions, section 170(a) allows a deduction for the contribution to any organization organized and operated exclusively for religious or charitable (or other) purposes if no part of the net earnings of such organization inure to the benefit of any private shareholder or individual.

Petitioners' deductions were made to the "Universal Life Church." The record is not clear whether their contributions were made directly to the parent Universal Life Church of Modesto, California or whether they were made to a local congregation of charter of said church owned by Petitioners. Petitioner Billie James Ledbetter testified that all their contributions were in cash and were make to one "church" which, in turn, remitted the amounts given to the Universal Life Church at Modest. Petitioners prodeced no valid evidence to establish that (1) contributions were made by them; (2) that such contributions were used exclusively for religious of charitable purposes, and (3) that no part of their contributions (if made) did not

inure to their personal benefit.[5] Accordingly, respondent's determination as to this issue is sustained.

Petitioners contend they realized no gain in 1979, when their Ford F700 truck was repossessed by a creditor, because they received no cash or other property in the transaction. In the repossession, the creditor assumed and paid a $9,000 indebtedness encumbering the truck which was owed to a bank. Petitioners contend the indebtedness was actually $10,800 and they paid $1,800 of their own money in order to clear the title.

Under section 1001, gain is realized when the amount realized from the sale or other disposition of property exceeds the adjusted basis

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5 Petitioners attempted to introduce into evidence receipts prepared by Universal Life Church of Modesto personnel purporting to show the amounts Petitioners donated to that organization during the years at issue. On respondent's objection, we excluded these documents as inadmissible hearsay as the personnel who prepared them were not called to testify and the documents did not fall within any exception to the hearsay rule. Fed. R. Evid. 802, 803, 804; see Davis v. Commissioner, 81 T.C. 806, 814-815 (1983), affd. without published opinion 769 F.2d 931 (9th Cir. 1985).

of the property. Under section 1.1001-2(a)(1), Income Tax Regs., the "amount realized" includes the amount of any liability from which the transferor is discharged as a result of the sale or disposition. In this case, Petitioners conveyed title to their truck in consideration for payment by the purchaser of an amount owing on the truck. Petitioners are deemed to have received the $9,000 paid by the purchaser to discharge this indebtedness, and this amount is considered to have been realized by them for purposes of determining gain or loss. However, if Petitioners were required to pay a portion of an indebtedness encumbering the asset transferred, the amount paid by them would reduce or offset the "amount realized" and thus reduce the gain. Petitioners contend they paid $1,800, however, they produced no evidence, other than Petitioners' uncorroborated testimony, to establish such payment. Petitioners produced a copy of the check by the purchases to the bank in payment of the indebtedness on the truck; however, the check was in the amount of $9,000 and, while there was a reference to the lien,

the amount of the lien was not stated. Petitioners produced no sales agreement as to the **repossession**; consequently, there is nothing in the record from which we can conclude that the gain of $5,461,37 should be reduced by the $1,800 Petitioners claim they paid. Accordingly, respondent is sustained on this issue.

Respondent disalowed accelerated depreciation for 1980 and 1981 on a 1975 Dodge Custom Van and a 1978 Honda 750 motorcycle, both of which were admittedly used in Petitioners' auto repair business.

Petitioners acknowledged that the 1975 Dodge Custom Van had been acquired used; however, Petitioners maintained the Honda motorcycly was purchased new.

Section 167(b)(2) authorizes the depreciation of assets under a declining balance method, which does not exceed twice the straight-line method. However, under section 1.167(c)-1(a)(6), Income Tax Regs., in order for property to qualify for such method of depreciation, it is necessary that the "original use" of the property in the trade or business begins with the

taxpayer. The original use of the 1975 Dodge Custom Van clearly did not commence with Petitioners, since they purchased the van used. Consequently, the 1975 Dodge Custom Van could not be depreciated under an accelerated method. As to the 1978 Honda motorcycle, we accept Petitioners' contention that it was acquired new. However, on Petitioners' purported 1980 return, the qcquisition date for the motorcycle was listed on their depreciation schedule as March 1978. No depreciation was claimed for the motorcycle on their 1979 return and, based on the testimony of Petitioner Billie James Ledbetter, he did not begin his auto repair business until late 1979 or early 1980, after he terminated the hauling business. We conclude, therefore, that the Honda motorcycle was placed in use in Petitioners' auto repair business sometime in late 1979 or early 1980 and long after Petitioners had acquired the motorcycle. The original use of the motorcycle, therefore, was not in the auto repair business. For these reasons, therefore, the Honda motorcycle could not be depreciated under the double declining balance method.

Respondent's determination is sustained.

With respect to the additional gross income of $658.89, which respondent determined Petitioners earned in their auto repair business for 1981, Petitioners sustained their burden of proof on this issue. Petitioners explained they were on the cash basis of accounting and the amount at issue represented receivables from two customers who had never paid Petitioners and later died. Accordingly, this adjustment is redetermined in favor of Petitioners.

Petitioners also bore the burden of proof with respect to the additions to tax under sections 6651(a)(1), 6653(a), and 6654. Bixby v. Commissioner, 58 T.C. 757, 791 (1972). Section 6651(a)(1) applies where no return is filed or where the return is not timely. Section 6653 (a) applies where any part of an underpayment of tax is due to a negligent or intentional disregard of rules and regulations, and section 6654 (a) applies where there is an underpayment of estimated tax.

Since no returns were filed by Petitioners for 1979 and 1980, and no valid reasons were ad-

vanced for the failure to properly file, the additions to tax under sections 6651(a)(1) and 6653(a) are sustained.[6] The addition to tax under section 6654(a) is mandatory once a deficiency is established unless Petitioners can bring themselves within certain exceptions not here applicable. Grosshandler v. Commissioner, 75 T.C. 1, 20-21 (1980). Accordingly, this addition to tax, determined only for 1979, is also sustained.

Decision will be entered under Rule 155.

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6 No section 6651(a)(1) additions to tax were determined for the years 1980 and 1981.